IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8916 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMIKANT BHAGUBHAI

Versus

D K SOLANKI

Appearance:

1. Criminal Misc.Application No. 8916 of 2002

MR PARESH M DAVE for Petitioner No. 1-7

MR ND GOHIL for Respondent No. 1

MR VM PANCHOLI, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 02/07/2003

ORAL JUDGEMENT

The petitioners herein have preferred this

petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") for quashing a complaint being Criminal Case No.1099/1994 filed against them, as well as against other accused persons, by respondent no.1 herein, before the Court of the learned Judicial Magistrate First Class, Ahmedabad (Rural) at Ahmedabad for offences punishable under Section 43 & 44 of the Water (Prevention and Control of Pollution) Act, 1974, read with Section 47 of the said Act. The petitioners no.1, 2 and 3 are the Managing Directors while the petitioners no.4, 5, 6 and 7 are the Directors of the Company.

2. The first respondent has filed the aforesaid complaint, as an Assistant Law Officer of Gujarat Pollution Control Board at Gandhinagar before the above Court, stating that the accused in the said criminal case are running industry in the name and style of Cellulose Products of India Ltd. situated at Ahmedabad. It is alleged in the complaint that the aforesaid Unit has been discharging 3 lakh liters of trade effluent everyday. It is further alleged in the complaint that the Board had imposed certain conditions, in order to enable Cellulose Products of India Ltd. to qualify for the consent of the Board under the said Act. It is further alleged in the complaint that the said industry was discharging waste water into the nearby pond, from where water was being used for irrigation purpose. It is also alleged in the complaint that sample of the said effluent was collected and was duly tested; that on examination it was noticed that there was a violation of the provisions made in Section 24, 25 and 26 of the said Act, resulting in commission of offence punishable under Section 43, 44 and 47 of the said Act. It is also alleged in the complaint that the said violation has been committed by the accused persons named in the complaint and therefore, the accused persons may be dealt with in accordance with law.

3. On receipt of the complaint, it was ordered to be registered and process was issued against the accused persons, including the present petitioners. It transpires from the record that the present petitioners are original accused no. 3, 4, 5, 7, 8 and 9. They have brought this petition under Section 482 of the Code for quashing the same, mainly on the ground that the complaint does not disclose any offence against the petitioners and therefore, the complaint deserves to be quashed.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Mr.N D

Gohil learned advocate appears for respondent no.1, whereas Mr.V M Pancholi learned APP appears on behalf of the State. I have heard the learned advocates for the parties and have perused the papers.

5. In order to substantiate the contentions raised in the petition, the learned advocate for the petitioners has argued that the complaint of the first respondent does not disclose the involvement of the present petitioners in the commission of the offence in question. In other words, it has been argued that it has not been alleged in the complaint that the petitioners are responsible for the day to day affairs and business of the company. It is required to be considered that so far the company is concerned, the complaint has been filed against the company and the company has not come forward with a petition to quash the said complaint. Therefore, even if the present petition is allowed and even if the complaint is quashed qua the present petitioners, the first respondent will certainly be at liberty to prosecute the remaining accused persons, including the said company, in accordance with law.

6. Here the question which arises for consideration is, as to whether the complaint discloses any offence against the present petitioners. As said above, the petitioners have contended that it is not stated in the complaint that the petitioners are responsible for the day to day business and affairs of the Company.

7. For the said purpose, the petitioners have referred to the provisions made in Section 47 of the said Act. It would be worthwhile to refer to the provision contained in Section 47 of the said Act, which may be reproduced for ready reference as follows;

> Sec. 47 : Offences by Companies :- (1) "Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was incharge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :
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> Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence

to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly".

7.1 On a bare reading of subsection 1 of Section 47 of the said Act, it is very clear that if an offence has been committed by a company, then every person who at the time the offence was committed, was incharge of, and was responsible to the company for the conduct of the business of the company, stands liable for the act or omission leading to the offence.

7.2 This clearly shows that before a person can be said to have committed an offence under this Act, it is to be shown that the said person was incharge of and was responsible to the company for the conduct of the business of the company.

8. On a bare reading of the complaint, it appears that no such allegation has been made in the complaint showing that the present petitioners were incharge of and were responsible to the company, for the conduct of the business of the company. It can be gathered that when there are so may Directors attached to a company there may be distribution of work amongst them. Therefore, it has to be ascertained as to whether a particular person is really incharge of and responsible to the company, for the conduct of the business of the company or not. This would again be a question of fact and may depend upon the resolutions passed by the Board of Directors in that behalf.

9. Anyway, there is no allegation in the complaint that the petitioners are incharge of and responsible to the company for the conduct of the business of the company. The learned advocate for the respondent has taken me through the averments made in the complaint. It would be relevant to refer to the averments made in para 1 and para 13 of the complaint. The same have been

reproduced for ready reference as follows;

Para 1 : "Accused are running industry in the name and style Cellulose Products of India Limited, which is situated at Ramol, Ahmedabad."

Para 13 : "Thus, abovenamed accused have violated the provisions of Section 24, 25 and 26 and committed offences under Section 43 and 44, read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974."

10. On the basis of the said averments, an attempt has been made to show that all the petitioners are running industry in the name and style of Cellulose Products of India Ltd.. There is no dispute about the same. The petitioners are Managing Directors/Directors of the said company and the company is running its business as aforesaid. This does not mean that the petitioners as Managing Directors/Directors of the said company are incharge of and responsible for the business of the company. This can be gathered from the resolution passed by the Board of Directors of the company. Atleast there should have been an allegation in the complaint that the petitioners are responsible as aforesaid.

11. So far para 13 is concerned, there is a bare allegation that the accused persons have violated the provision of Section 24, 25 and 26 of the said Act. Here also, it is not proved on record that the petitioners are incharge and are responsible to the company for its business. In other words, necessary averments are missing in the complaint, though it has been filed by the Law Officer of the Board. In this connection, the learned advocate for the petitioner has relief upon a decision of this Court in a group of matters in Cr.M.A.No.8885/2002 and others. It has been disposed of by this Court on 09/05/03. The said matter related to the provisions made for an offence punishable under Section 16 of the Prevention of Food Adulteration Act, 1954. There also similar question had arisen and this Court has made the following observation in para 6;

"In the facts of the present case also, the complaints do not contain any allegation whatsoever against the petitioners, and they appear to have been implicated and joined as the accused persons only by adding their names in the cause title. Therefore, although the nomination prima facie appear to be invalid, the petitioners joined as Directors of the Federation, in absence

> of even an allegation of consent, connivance or negligence leading to the commission of the alleged offence, could not be proceeded against. Therefore, the complaints and the criminal cases against them are liable to be quashed at this stage. It was, however, contended by the learned A.P.P. that the lacunae in the drafting of the complaint was not fatal to the prosecution and in any case, the Company i.e. the Federation being an accused, the trial Court could proceed against any person under Section 319 of the Criminal Procedure Code. He, therefore, requested that the option to implicate and proceed against any of the petitioners should be left open. The learned Counsel for the petitioners having expressed no objection to that proposition, these petitions are disposed accordingly."

12. In the present case also, we find that necessary averments have not been made in the complaint, alleging that the petitioners are incharge of and are responsible to the company, for the business of the company. What is the distribution of work between the Directors is not known to the Court and there is no allegation made in the complaint with respect thereto. In that view of the matter, it cannot be said that a case has been made out against the present petitioners.

13. Even in an earlier matter being Cr.M.A.No.3986/2002, this Court (Coram : D.H.Waghela, J.) had taken a similar view, in a judgment dated 25/10/02. The said matter also related to an offence punishable under the Prevention of Food Adulteration Act, 1954. The provisions with respect to the offence committed by a company and its Directors or Officers are almost similar and identical. Therefore, the said two decisions of this Court will squarely apply to the case on hand.

14. It is, therefore, clear that the complaint does not show that the petitioners have prima facie committed the offence in question and therefore, the complaint cannot be permitted to proceed against the petitioners, without having basis for any allegation against the petitioners, showing that they have committed offence in question.

15. In that view of the matter, when the complaint does not disclose any offence against the petitioners even prima facie, then in that case, this would be a fit case for exercising inherent jurisdiction under Section

482 of the Code for quashing the complaint.

16. At the same time, it was made clear in the earlier matter, disposed of on 09/05/03 that in case any evidence is found during the course of the trial, then it would be open to the complainant to take appropriate steps under Section 319 of the said Code. Similar observation can be made in the present matter also.

17. For the foregoing reasons, this petition is allowed and Criminal Case No.1099/1994 pending before the learned Judicial Magistrate First Class, Ahmedabad (Rural) at Ahmedabad is ordered to be quashed qua the present petitioners. It is, however, made clear that it would be open to the first respondent to proceed ahead, in accordance with the provisions made in Section 319 of the Code. It is, however, made clear that the matter has been decided on the basis of the facts of the case. Rule is made absolute to the above effect.

(D. P. Buch, J.)

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